

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 21-0847V

UNPUBLISHED

OSCAR GARNER,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: August 17, 2022

Special Processing Unit (SPU);  
Ruling on Entitlement; Concession;  
Table Injury; Influenza (Flu) Vaccine;  
Shoulder Injury Related to Vaccine  
Administration (SIRVA)

*Jerome A. Konkell, Samster, Konkell & Safran, S.C., Milwaukee, WI, for Petitioner.*

*Tyler King, U.S. Department of Justice, Washington, DC, for Respondent.*

### **RULING ON ENTITLEMENT<sup>1</sup>**

On February 3, 2021, Oscar Garner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that he received an influenza (“flu”) vaccination on November 6, 2018, and thereafter suffered from a left shoulder injury related to vaccine administration (“SIRVA”). Petition at 1. Petitioner further alleges that he experienced symptoms of his injury for more than six months. Petition at 5. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On August 16, 2022, Respondent filed his Rule 4(c) report in which he concedes that Petitioner is entitled to compensation in this case. Respondent’s Rule 4(c) Report at 1. Specifically, Respondent states that Petitioner has satisfied the criteria set forth in the

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<sup>1</sup> Because this unpublished Ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims’ website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Vaccine Injury Table and that he “had no history of pain or dysfunction in his left shoulder prior to receiving the flu vaccine; pain occurred within 48 hours after receipt of an intramuscular vaccination; the pain and reduced range of motion were limited to the shoulder in which the vaccine was administered; and no other condition or abnormality would explain petitioner’s symptoms.” *Id.* at 3. Respondent further agrees that Petitioner has met the six-month sequelae requirement and therefore Petitioner has satisfied all legal prerequisites for compensation under the Act. *Id.*

**In view of Respondent’s position and the evidence of record, I find that Petitioner is entitled to compensation.**

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief Special Master